

necessary in a particular case. Where a borrower is unable by reason of pre-existing encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may, if he determines such security to be reasonably adequate and the form and nature thereof otherwise appropriate, accept other forms of security. See RUS Bulletins 320-4, 320-22, 321-2, 322-2, 323-1, and 326-1 for details. See 7 CFR part 1744, subpart B for information on lien accommodations and subordinations.

(b) Loan security documents of borrowers with loans approved after October 6, 1997 will provide limits on allowable cash distributions in any calendar year as follows:

(1) No more than 25 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 1 percent of its total assets after the distribution is made;

(2) No more than 50 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 20 percent of its total assets after the distribution is made;

(3) No more than 75 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 30 percent of its total assets after the distribution is made; or

(4) No limit on distributions if the borrower's net worth is at least 40 percent of its total assets after the distribution is made.

(c) Borrowers that have not received a loan after October 6, 1997 may request the Administrator to apply these requirements to them. Borrowers may request in writing that RUS substitute the new requirements described in paragraphs (b)(1) through (b)(4) of this section. Upon request by the borrower, the provisions of the borrower's loan documents restricting cash distributions or investments shall not be enforced to the extent that such provisions are inconsistent with this section.

(d) Rural development investments meeting the criteria set forth in 7 CFR part 1744, subpart D, will not be counted against a borrower's allowable cash distributions in any calendar year (7 U.S.C. 926).

(e) References to a borrower's mortgage in this section include deeds of

trust and any other loan document applying the same requirements to a borrower.

(f) This section does not limit the rights of any parties to the mortgage other than RUS or RTB.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 59 FR 29537, June 8, 1994; 62 FR 46871, Sept. 5, 1997]

§ 1735.47 Rescissions of loans.

(a) Rescission of a loan may be requested by a borrower at any time. To rescind a loan, the borrower must demonstrate to RUS that:

(1) The purposes of the loan being rescinded have been completed;

(2) Sufficient funds are available from sources other than RUS, RTB or FFB to complete the purposes of the loan being rescinded; or

(3) The purposes of the loan are no longer required to extend or improve telephone service in rural areas.

(b) Borrowers submitting loan applications containing purposes previously covered by a loan that has been rescinded shall include in the application an explanation, satisfactory to RUS, of the change of conditions since the rescission that re-establishes the need for those purposes.

(c) RUS shall not initiate the rescission of a loan unless all of the purposes for which telephone loans have been made to the borrower under the Act have been accomplished with funds provided under the Act.

[56 FR 26598, June 10, 1991]

§§ 1735.48–1735.49 [Reserved]

Subpart E—Basic Requirements For Loan Approval

SOURCE: 54 FR 13351, Apr. 3, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

§ 1735.50 Administrative findings.

The RE Act requires that the Administrator make certain findings to approve a telephone loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these

§ 1735.51

findings. Details on the information required to support these findings are included in 7 CFR part 1737.

§ 1735.51 Required findings.

(a) *Feasibility of and security for the Loan.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the security for the loan is reasonably adequate and the loan will be repaid on time. This finding is based on the following factors:

(1) Self-liquidation of the loan within the loan amortization period; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

(2) Reasonable assurance of achieving the telephone market projections upon which the loan is based.

(3) Economic feasibility (based on projected revenues, expenses, net income, maximum debt service, and rate of return on investment) for the proposed system using local service rate schedules appropriate for the area served.

(4) Impact of the proposed loan and construction on the ratio of the borrower's secured debt to assets.

(5) Projected growth in the borrower's equity.

(6) Satisfactory experience and reputation of the system's principal owners and manager.

(7) A first lien on the borrower's total system or other adequate security.

(8) Fair market value of the borrower's assets as represented in its financial reports to RUS.

(9) Appropriate financial and managerial controls included in the loan documents.

(10) Other factors determined to be relevant by RUS.

(b) *Area coverage.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that adequate telephone service will be made available to the widest practical number of rural users during the life of the loan.

(c) *Nonduplication or certificate requirement.* The borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine

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that no duplication of service shall result from a particular loan for those borrowers not required by the state regulatory commission to have a certificate of convenience and necessity (or its equivalent). For borrowers required to have a certificate of convenience and necessity, all portions of the existing and proposed system must be covered by the certificate.

[54 FR 13351, Apr. 3, 1989. Redesignated at 55 FR 39395, Sept. 27, 1990, as amended at 56 FR 26598, June 10, 1991]

§ 1735.52 Findings required for particular loan purposes.

(a) *Refinancing.* For loans that include funds to refinance outstanding indebtedness of the borrower, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that the inclusion in the loan of such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas. See 7 CFR 1735.21.

(b) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of telephone facilities within or for nonrural areas, the borrower shall provide RUS with satisfactory evidence to enable the Administrator to determine that such funds shall be necessary and incidental to furnishing or improving telephone service in rural areas.

§§ 1735.53-1735.59 [Reserved]

Subpart F—Mortgage Controls on Acquisitions and Mergers

SOURCE: 54 FR 14626, Apr. 12, 1989, unless otherwise noted. Redesignated at 55 FR 39395, Sept. 27, 1990.

§ 1735.60 Specific provisions.

(a) The standard form of RUS mortgage contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.